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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,299	07/18/2003	Arvind N. Shah	CR44U-US	7273
60723	7590	09/13/2007		
AVON PRODUCTS, INC. AVON PLACE SUFFERN, NY 10901			EXAMINER KANTAMNENI, SHOBHA	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 09/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/622,299

Applicant(s)

SHAH ET AL.

Examiner

Shobha Kantamneni

Art Unit

1617

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,5-14 and 21-29.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See page 2.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
**SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER**

Continuation of 11:

Applicant's arguments have been considered, but not found persuasive, as discussed in the final office action and those found below.

Applicant argues that "it is clear from Tan that the first and second platelets are merely "blended" together [col. 3, lines 6~10; col 6, lines 50-52; coll. 8, lines 545-8]. There is no reasonable construction of the term "bonded" which would embrace a simple physical admixture of two components". This argument has been considered, but not found persuasive because the term "bonded" broadly encompasses physical or chemical bonding of bismuth oxychloride to colorant, given the plain meaning of the term "bonded". Further, from the recitation in the instant claim "a pearlescent component comprising a bismuth oxychloride containing pearlescent ingredient bonded to a colorant", means that bismuth oxychloride is physically or chemically bonded to colorant.

Tan et al. teach a cosmetic composition comprising the first platelet, alumina treated with metal oxide, and the second platelet which can be bismuth-oxychloride, copper etc., which together match the natural color of the skin, i.e the second platelet which can comprise pearlescent ingredient such as bismuth oxychloride is blended with the colorant, alumina treated with mica, which together match the natural color of skin, and the composition further comprises a standard interference. It is also taught that the preferred interference pigments are pigments of different colors or types combined to blend an appropriate shade or intensity of color to match the natural skin tone i.e the interference pigment component also matches the natural skin tone. See column 4, lines 40-43, line 66, col. 4, line 4 c01.5; c01.5 lines 49-53. Tan et al. do not explicitly teach the particular platelet, bismuth oxychloride as the second platelet in the composition therein. It would have been obvious to a person of ordinary skill in the art at the time of invention to employ bismuth oxychloride as the second platelet because Tan teaches that the second platelet can be mica, bismuth oxychloride, alumina, copper or bronze etc. One of ordinary skill in the art would have been motivated to employ a pearlescent pigment, bismuth oxychloride as second platelet with reasonable expectation of success of obtaining a composition that matches the natural color of the skin on blending with the first platelet, because Tan teaches that the two platelets together which include first platelet and second platelet form the mosaic which gently reflects light and matches the natural color of the skin. Note that these two platelets together which match natural color of skin are further mixed with interference pigment which also match the natural skin tone.